

United States Court of Appeals for Veterans Claims

Vet. App. No. 19-919

THOMAS S. PRATT,

Appellant,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Appellee.

REPLY BRIEF FOR APPELLANT

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REPLY TO THE APPELLEE’S BRIEF

This brief is the Appellant’s reply to the Appellee’s brief.

I. THE APPELLEE CONTINUES TO ARGUE THAT APPELLANT’S DESIRE TO OBTAIN EMPLOYMENT IS RELEVANT DESPITE THIS COURT’S CLEAR DECISIONS TO THE CONTRARY.

The Appellee has conceded multiple bases for remand of Appellant’s claim. In his principal brief, the Appellee addresses Appellant’s argument that the Board erred by imposing a requirement that Appellant desire to seek employment in pharmacology for him to concur in his own requested change in the vocational rehabilitation plan.

Appellee’s Br. 13-14. The Appellee concedes that the Board’s statement that “Appellee informed VA that he ‘does not desire to obtain and maintain gainful employment in the area of pharmacology.’” Appellee’s Br. 13 (citing to R. at 17 (3-18)). The Appellee also conceded that this Court has previously held that Appellant’s desire to obtain employment is not relevant under 38 C.F.R. §21.94 (Appellee’s Br. 13) and that the Board’s mention of Appellant’s subjective desire is regrettable because this Court has held that that is not the proper standard. Appellee’s Br. 14.

However, the Appellee then tries to assert again that Appellant’s desire to obtain employment is relevant, by stating “whether Appellant agrees to undertake the necessary actions to make the vocational goal feasible is a relevant consideration under 38 C.F.R. §21.94 because the regulation requires that the veteran ‘fully participates and concurs in the change.’” Appellee’s Br. 14. This is nothing more than a backdoor attempt to have this Court consider criteria which this Court has explicitly rejected with regard to

Appellant's claim. Therefore, Appellant respectfully requests that the Court reject the Appellee's argument on this matter.

II. THE APPELLEE OBFUSCATES WITH REGARD TO APPELLANT'S ARGUMENTS AS TO THE BOARD'S INADEQUATE STATEMENT OF REASONS OR BASES FOR WHY THE BOARD CHANGED POSITION FROM ITS 2016 DECISION REGARDING THE LIKELIHOOD OF VOCATIONAL REHABILITATION IF A DIFFERENT LONG-RANGE GOAL IS CHOSEN

The Appellee acknowledges Appellant's argument in his principal brief that the Board erred by making a finding of fact in the currently-appealed Board decision that contradicts a finding of fact the Board made in its 2016 decision. Appellee's Br. 16. Namely, the issue is that the Board found in its 2016 decision that Appellant's vocational rehabilitation is more likely if a different long-range goal from actor was established (R. at 218 (199-220)) yet the Board found in the currently-appealed decision that vocational rehabilitation was not shown to have been more likely if a different long-range goal (from actor to pharmacist) was established (R. at 16).

Appellant indeed set forth in his principal brief several grounds for why the Board's finding of fact in its currently-appealed decision as to this issue is legally insufficient. Appellant's Br. 19-21. However, the Appellee's arguments do not address any of the grounds Appellant set forth. The Appellee's argument addresses a contention Appellant did not even make, that the Board is bound by findings of fact it made in decisions subsequently vacated by the Court. Appellant's Br. 16. Therefore, the Court should not allow itself to be distracted by the Appellee's argument on this matter.

III. CONCLUSION.

Appellant respectfully requests that the Court reverse the Board's decision and grant Appellant's requested change of vocational goal to pharmacist and thus direct payment of his vocational rehabilitation expenses he incurred for pharmacy school. Alternatively, should the Court determine such reversal in the entirety is not warranted, then Appellant respectfully requests that this Court reverse those portions of the Board decision that it determines require reversal, and remand the remaining issues back to the Board for re-adjudication.

Respectfully submitted,

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